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REC'D TN
REGULATORY AUTH.

JUN 19 2000
June 19, 2000

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OFFICE OF THE
EXECUTIVE SECRETARY

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Tariff to Revise the Lifeline Tariff to Comply with the FCC Calls Order*
Docket No. 00-00469

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Objection to Petition of Discount Communications to Convene a Contested Case and to Intervene. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

GMH:ch
Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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IN RE: **TARIFF TO REVISE THE LIFELINE TARIFF TO COMPLY WITH THE FCC
CALLS ORDER**

CLERK OF THE
EXECUTIVE SECRETARY

DOCKET NO. 00-00469

**BELLSOUTH TELECOMMUNICATIONS, INC.'S OBJECTION
TO PETITION OF DISCOUNT COMMUNICATIONS, INC.
TO CONVENE A CONTESTED CASE AND TO INTERVENE**

BellSouth Telecommunications Inc. ("BellSouth") respectfully submits this objection to the "Petition of Discount Communications, Inc. to Convene a Contested Case and to Intervene." As explained below:

1. BellSouth's tariff has the effect of reducing rates by increasing the amount of federal Lifeline credits available to BellSouth's wholesale and retail customers;
2. The FCC's recent CALLS order requires implementation of this tariff by July 1, 2000; and
3. Discount's Petition asks the TRA to do something it has already decided not to do: require BellSouth, on a going-forward basis, to fund the \$3.50 state Lifeline credit that Discount is required to provide to its Lifeline end users.

The TRA, therefore, should exercise its discretion not to convene a contested case and deny Discount's Petition.

I. BELLSOUTH'S TARIFF HAS THE EFFECT OF REDUCING RATES BY INCREASING THE AMOUNT OF FEDERAL LIFELINE CREDITS AVAILABLE TO BELLSOUTH'S WHOLESALE AND RETAIL CUSTOMERS.

BellSouth's Lifeline tariff currently provides for a Federal baseline Lifeline credit of \$5.25. BellSouth's proposed tariff increases that Federal baseline Lifeline

credit to \$6.10. The effect of the proposed tariff, therefore, is to make telecommunications services available at lower rates to both BellSouth's Lifeline customers and to persons who purchase Lifeline services resold by Discount.

II. THE FCC'S RECENT CALLS ORDER REQUIRES IMPLEMENTATION OF BELL SOUTH'S PROPOSED TARIFF BY JULY 1, 2000.

BellSouth's tariff filing package is attached as Exhibit 1. This filing package explains that the proposed tariff is being filed in order to comply with the FCC's recent CALLS order. The package also explains that the CALLS Order provides that these changes must be effective July 1, 2000. Finally, the package explains that the CALLS order was not released until May 31, 2000 and that a waiver of the normal 30-day interval for tariffed filings is necessary in order to comply with the requisite July 1, 2000 effective date.

III. DISCOUNT'S PETITION ASKS THE TRA TO DO SOMETHING IT HAS ALREADY DECIDED NOT TO DO: REQUIRE BELL SOUTH, ON A GOING-FORWARD BASIS, TO FUND THE \$3.50 STATE LIFELINE CREDIT THAT DISCOUNT IS REQUIRED TO PROVIDE TO ITS LIFELINE END USERS.

Although the relief requested by Discount is not explicitly stated in its Petition, it is BellSouth's understanding (based on conversations with Discount's Counsel regarding the Petition) that Discount is asking the TRA to require BellSouth, on a going-forward basis, to fund the \$3.50 state Lifeline credit that Discount is required to provide to its Lifeline end users. Discount's arguments in support of this request are based on Discount's view of Paragraph 370 of the FCC's Universal Service Order in Docket No. 97-157. See Petition at 2. Discount, however, has already presented its view of Paragraph 370 during the contested

case proceeding in Docket No. 00-00230, and the TRA has already decided not to do what Discount is asking it to do.

A. Discount has already presented its claims regarding Paragraph 370 of the FCC's Universal Service Order.

During the contested case proceedings in Docket No. 00-00230, Discount's witness presented testimony regarding the resale of Lifeline generally, (*see, e.g.,* Transcript of Proceedings in Docket No. 00-00230, Vol. 1 at 139-144), and regarding Paragraph 370 specifically. (*See, e.g., Id.* at 142-43). Additionally, Discount's counsel cross-examined BellSouth's Lifeline witness extensively regarding the resale of Lifeline generally, (*see, e.g., Id.,* Vol. 3 at 585-611), and regarding Paragraph 370 specifically. *See, e.g., Id.* at 592. Finally, Discount expressly argued its view of Paragraph 370 in the briefs it filed in that Docket. *See* Pre-Hearing Brief of Discount Communications at 6-7; Reply Brief of Discount Communications at 2-5; Post-Hearing Brief of Discount Communications at 2-8.

B. The TRA has already decided not to require BellSouth, on a going-forward basis, to fund the \$3.50 state Lifeline credit that Discount is required to provide to its Lifeline end users.

Two motions regarding the \$3.50 state Lifeline credit amount were presented during the Director's deliberations in Docket No. 00-00230. The first motion expressly stated that "on a going forward basis BellSouth should renew its funding of the state Lifeline subsidy for all customers in its service area regardless of whether they are served by the incumbent or reseller." Transcript of June 6, 2000 Director's Conference at 79. This motion did not prevail.

The prevailing motion on the issue of the \$3.50 state Lifeline credit amount stated that:

While an explicitly funded universal service program may be a better vehicle for administering the Lifeline subsidy, the Authority's interim policy is acceptable.

* * *

Based on the record, I find that BellSouth's existing Lifeline tariff is valid and enforceable under existing federal and state law. Further, BellSouth's existing Lifeline tariff correctly implements Tennessee's interim Lifeline policy requiring each carrier to fund its own Lifeline assistance program. Therefore, I find that BellSouth is not required to pass through the \$3.50 state credit to Discount.

Transcript of June 6, 2000 Director's Conference at 81-82 (emphasis added). This prevailing motion states that BellSouth's existing Lifeline tariff is valid and enforceable under "existing federal . . . law," including Paragraph 370 of the FCC's Universal Service Order.¹ It also states that while the TRA could decide to create

¹ Discount's statement that "BellSouth's attorneys have acknowledged that 'it's a close call' whether BellSouth's Lifeline tariff is consistent with the FCC's rules" goes beyond even taking liberties with the record in Docket No. 00-00230. See Petition at 2. This statement is simply inconsistent with the testimony, the briefs, and the argument presented by BellSouth in that Docket to show, among other things, that the FCC has unequivocally stated that it would not intrude on how the states had decided to fund the \$3.50 state Lifeline credit. See Universal Service Order ¶361. Additionally, when Discount actually quotes the record in that Docket, BellSouth's position is abundantly clear. Although relegated to a footnote, Discount correctly notes that the actual quote is "For the sake of argument, let's just say it is a close call." Petition at 2, n.2. Finally, when the quote is placed in the context of the actual record, it is clear that BellSouth was not addressing the merits of Discount's arguments regarding the Universal Service Order, but was instead demonstrating the fallacy of Discount's general position that BellSouth should ignore the plain language of its tariffs when a disgruntled customer alleges that the tariffs conflict with the customer's arguments regarding an FCC Order. See Tr. of June 6, 2000 Director's Conference at 69 ("[I]n his closing argument,

an explicit state Lifeline fund in the Universal Service Docket, BellSouth's existing Lifeline tariff "correctly implements Tennessee's interim Lifeline policy requiring each carrier to fund its own Lifeline assistance program." The TRA, therefore, has already decided not to do what Discount asks it to do: require BellSouth to fund Discount's state Lifeline credit on a going forward basis.

Thus the TRA has already heard testimony, considered legal briefs, and heard oral arguments regarding the exact same issue that the exact same company has asked it to decide in this docket. Neither law nor logic suggests that the TRA should convene a contested case to consider an issue it expressly decided two weeks earlier. Instead, the TRA should exercise its discretion to deny Discount's Petition. *See Consumer Advocate Division v. Greer*, 967 S.W.2d 759, 763-64 (Tenn. 1998)(emphasis added).

CONCLUSION


The TRA should not delay putting into effect a tariff which effectively decreases rates as required by federal law. Instead, the TRA should deny

Mr. Walker said the question is can BellSouth enforce a tariff that seems -- seems to be inconsistent with an FCC Order? For the sake of argument let's assume it's a close call.") (emphasis added)

Discount's Petition and approve BellSouth's proposed tariff during the June 20,
2000 Director's Conference.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☒ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight

Richard Collier, Esquire
Tennessee Regulatory Authority
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Nashville, TN 37243-0500

- ☐ Hand
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